



BOARD OF INQUIRY *(Human Rights Code)*

IN THE MATTER OF the Ontario *Human Rights Code*, R.S.O. 1990, c.H.19, as amended;

AND IN THE MATTER OF the complaint by Tan Tai Duong, dated August 25, 1997 alleging discrimination with respect to services because of place of origin, ethnic origin and race.

B E T W E E N :

Ontario Human Rights Commission

- and -

Tan Tai Duong

Complainant

- and -

Les Garai carrying on business as Langstaff Auto Repairs

Respondent

DECISION

Adjudicator: Matthew D. Garfield

Date: September 26, 2000

Board File No: BI-0276-99

Decision No: 00-016

Board of Inquiry (*Human Rights Code*)
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APPEARANCES

| | | |
|---------------------------------|---|--------------------------------|
| Ontario Human Rights Commission |) | Rena Shadowitz, Student-at-Law |
| |) | |

| | | |
|--------------------|---|---------|
| Tan Tai Duong, |) | Himself |
| <i>Complainant</i> |) | |

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| Les Garai c.o.b. as | | |
| Langstaff Auto Repairs, |) | No Appearance |
| <i>Respondent</i> |) | |

INTRODUCTION

“Service with a smile”, not “service with a slur”, is what customers expect from service providers. These are my reasons for decision on the hearing of the complaint (“the Complaint”) of Tan Tai Duong that he was discriminated against in the provision of services and goods on the grounds of place of origin, ethnic origin and race by Les Garai carrying on business as Langstaff Auto Repairs. This was in violation of sections 1 and 9 of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (“the *Code*”).

ISSUES

1. Did the Ontario Human Rights Commission (“the Commission”) prove a *prima facie* case of discrimination by the Respondent against the Complainant? If so, has the Respondent made out a defence?
2. What is the appropriate remedy?

DECISION

The Respondent violated the Complainant’s rights under section 1 of the *Code*.

BACKGROUND

Mr. Duong bought a used car from Langstaff Auto Repairs. Mr. Duong claims that Mr. Garai, the owner, sold him a defective car and refused to fix it. In the course of his interaction with Mr. Garai, the Complainant alleges that Garai threatened him, cast racial slurs against him and failed to repair his car because of his racist view of Asians.

The Commission investigated the matter and decided to refer the subject-matter of the complaint to the Board of Inquiry (“the Board”). On October 28, 1999, the hearing process before the Board commenced by way of the conference call with all the parties. Filing dates for pleadings and disclosure were set as well as a mediation date. A letter confirming these matters was sent to the parties.

The mediation did not occur as Mr. Garai failed to attend or even advise the Board of his non-attendance. The other parties were in attendance on the day of the mediation. The Board sent a letter to the parties dated February 3, 2000 indicating that the Respondent did not attend the mediation and that hearing dates were set for March 6 and 7, 2000. Mr. Garai was not heard from until the morning of the hearing on March 6th.

On March 6th, someone called on behalf of Mr. Garai and said he would not be attending the hearing and asked that it be postponed. The other parties appeared at the hearing. In the presence of the other parties, I called Mr. Garai on the speaker phone in the hearing room. He indicated that he was unable to appear and did not know when he would be able to. I was able to converse with him (as on the initial conference call) without difficulty. After hearing submissions from the parties, I ordered that the hearing be adjourned to the following day. Mr. Garai was to send a request for an adjournment outlining the reason for the adjournment, proposed new dates for the hearing, and a letter from his physician, if available. The Deputy Registrar read the Order to the person who called on behalf of Mr. Garai.

At 4:41 p.m. on March 6th, Mr. Garai faxed a letter to the Board asking for an adjournment due to having had an eye operation. He indicated that he would be seeing a specialist on March 15, 2000 and would submit a letter from the surgeon at that time. He also requested, for the first time, a language interpreter for the hearing.

I held a Conference call with the parties at 5 p.m. on March 6th, save for Mr. Garai who did not answer. Upon hearing the submissions of the Commission and the Complainant, I adjourned the hearing on the merits to March 20th and ordered that Mr. Garai provide a letter to the Board from his doctor indicating when Mr. Garai would be medically able to attend the hearing.

A Conference call was set for March 23rd with the parties. On March 20th, Mr. Garai faxed a letter from his family physician, Dr. Kowalewski, to the Board. The doctor's letter did not mention anything about his eye operation but talked of his arthritic condition. The doctor wrote, "His prognosis seems to be very guarded and the course of his disease unpredictable."

Mr. Garai was called before the March 23rd Conference call. He did not indicate that he would not be participating in the call. On March 23rd, the other parties were on the call. Mr. Garai was not on the call. Upon hearing the submissions of the Commission and the Complainant, I ordered the hearing reconvene on April 10th. I also ordered that if the Respondent sought another adjournment, he should do so along with a doctor's note prior to the commencement of the hearing on April 10th. I also ordered language interpreters for both the Complainant and Respondent, per their requests. A letter from the Deputy Registrar with my Order was sent to the parties.

On April 10, 2000, the hearing on the merits commenced. Neither Mr. Garai nor a representative of his was present or telephoned. The parties urged me to begin the proceedings on the basis that every courtesy had been extended to Mr. Garai. I was told that it was clear that he was disrespecting the process before the Board from the start (he had not even filed pleadings) and that it would be unfair to the other parties to adjourn the hearing yet again. I agreed. The hearing on the merits commenced and finished that day, in the absence of Mr. Garai.

DUONG'S EVIDENCE

Mr. Duong testifies that he was born in Vietnam and came to Canada in 1980. He has been a driving instructor for over seven years. As a driving instructor, he uses his own car for teaching. This is the connection with the Respondent: Mr. Duong wanted to buy a car for his business. He got an Auto Trader and saw a car he liked. He called the number in the ad and Alex, an employee of the Respondent, answered.

On or about March 5, 1997, Mr. Duong and his wife went to Langstaff to see the car. He checked and test drove the car. He called Alex back and arrived at a deal to buy the car. He gave a deposit and said he would pick up the car the following week. Arrangements were made for a safety check.

Mr. Duong states that on March 10, 1997, he went to Langstaff to complete the transaction. He gave the balance of the money owing. He asked for a test drive of the car but was refused. He received the certification and ownership transfer papers and he and the salesperson from Langstaff proceeded to the Ministry of Transportation office to complete the transfer of ownership. The person at the MTO office pointed out that the certification paper was almost expired. Mr. Duong says he was not worried as Alex had assured him that the car was in good working condition and that it met all the safety requirements.

The problem began when Mr. Duong brought the car to Canadian Tire for a check. He brought it to them because he needed them to certify it for a Metro Toronto licence. He states under oath that he was advised by Canadian Tire that the car had some problems and that Canadian Tire could not approve the car for the licence without the repairs being done.

Mr. Duong says that he called Langstaff. He spoke to Mr. Garai and he told him to bring in the car on March 25th. Mr. Duong did just that. According to Mr. Duong's evidence, when he showed the repair list and estimate to Mr. Garai, he became very angry and swore at Mr. Duong. He says that Mr. Garai told him, "You shouldn't have taken the car to Canadian Tire because they only want your money". Mr. Garai then called Canadian Tire and swore at them. I note that in the Complaint (entered as Exhibit 1), Mr. Duong doesn't claim that Mr. Garai swore at them in the call, just that he shouted at them. Mr. Duong testifies that he asked Mr. Garai to fix the car and that Mr. Garai agreed to do so the next day. In the Complaint however, he does not state that Mr. Garai agreed to fix the car, only that "he would have someone check the car..."

The next morning he brought the car to Langstaff. Mr. Garai told him that he would have to leave the car for a day (in the Complaint, he says Mr. Garai said "for at least three hours"). Mr. Duong said he would not leave the car for that long (in the Complaint, he wrote that he told Mr. Garai that he would wait). At that point, according to Mr. Duong, Mr. Garai said to him, "You fuckin Chinese people, in your country, you drive a bicycle. Here you drive a car like this and you want me to fix this, fix that." This is the first alleged incident involving a discriminatory practice. Mr. Duong testifies that he was mad and sad because he did not cause the problem. He was also upset because Mr. Garai assumed that he did not know anything about cars because of

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is crucial for ensuring transparency and accountability in the organization's operations.

2. The second part outlines the various methods and tools used to collect and analyze data. This includes both traditional manual methods and modern digital technologies, highlighting the benefits of each approach.

3. The third part focuses on the role of human resources in the data collection process. It discusses how training and support for staff can significantly improve the quality and reliability of the data collected.

4. The fourth part addresses the challenges and limitations of data collection. It identifies common issues such as data quality, access, and security, and provides strategies to overcome these challenges.

5. The fifth part discusses the importance of data security and privacy. It outlines the necessary measures to protect sensitive information and ensure compliance with relevant regulations and standards.

6. The sixth part provides a summary of the key findings and recommendations. It emphasizes the need for a continuous and iterative process of data collection and analysis to ensure the organization remains up-to-date and responsive to changing circumstances.

7. The final part of the document includes a list of references and a glossary of terms. This section is intended to provide additional context and support for the information presented in the main body of the document.

his place of origin. Mr. Duong says that Mr. Garai was upset that he wanted so many things in the car fixed. In the Compliant and in his letter to the Commission dated April 2, 1997 (entered as Exhibit 2), but not in his testimony, Mr. Duong states that Mr. Garai said, "Fucking you people, I don't like you. I don't like your people. I don't like your country."

After this altercation, Mr. Garai did some work on the car. As they went on road tests, the problem with the car appeared to worsen, according to Mr. Duong. Mr. Garai said that he had done what Canadian Tire suggested needed to be done on the car. Mr. Duong took the car back to Canadian Tire and was advised that the problem was not corrected.

Mr. Duong went back to Langstaff on March 27, 1997 to speak with Mr. Garai about fixing the car. According to Mr. Duong's evidence, Mr. Duong told Mr. Garai that he was required to fix the problems with the car. Mr. Garai swore and said he did what Canadian Tire asked him to do. Mr. Duong says that he told Mr. Garai that he has one more day to fix the car. He yelled and swore at Mr. Duong and said he isn't going to do anything more on the car. Mr. Duong testifies that the swearing was not race based or discriminatory. Mr. Duong asked again that he fix the car. At this point, Mr. Garai grabbed a metal bar and chased Mr. Duong saying he would "kill me and dump me in the dumpster".

Mr. Duong says that Mr. Garai then said, in front of other people, "Look, look, the government gives the monkey a licence to teach other monkeys to drive. Get the fuck out of here." Mr. Duong states that he felt sad and embarrassed. He "felt deeply hurt and my reputation was hurt as a driving instructor." When asked what the term "monkey" meant to him in the context of Mr. Garai's statement, Mr. Duong testifies:

In the context of earlier comments, monkey means vietnamese. The first time I met Mr. Les [Garai], he asked me where I came from and I said, "I come from Vietnam but I'm Chinese."

Mr. Duong then left with his car unfixed. He testifies that he did not return as he believed Mr. Garai would not fix the car and because he is a racist. He says that he got the car fixed and that it cost approximately \$1,200.00. He has no receipts for the work done. The car was subsequently destroyed in a car accident in 1997. Later, he changes his evidence by saying

that he took the car to two different auto repair places. However, he cannot remember the name of either repair centre.

SHIPMAN'S EVIDENCE

The second and final witness was Lorne Shipman, an experienced investigator at the Commission. Entered as Exhibit 3 are Mr. Shipman's notes dated April 19, 1999 of his meeting that day with Mr. Garai. The notes correspond with the evidence Mr. Shipman gives.

Mr. Shipman testifies that he made several attempts to contact Mr. Garai regarding the Complaint. After receiving no response, Mr. Shipman decided to pay a call to Mr. Garai at his business. He did so on April 19, 1999. He had a 10-15 minute conversation with Mr. Garai.

Mr. Shipman says under oath that Mr. Garai, after having the Complaint outlined to him, said, "They look all the same" and referred to Mr. Duong as the "chinaman" and "oriental guy". Mr. Shipman testifies that Mr. Garai said that he may have called Mr. Duong racial names, but only after he was called "old white guy" by Mr. Duong. Mr. Garai indicated that he did not care about the proceedings before the Commission and admitted to throwing correspondence from the Commission in the garbage.

Mr. Shipman's notes indicate that Mr. Garai said that Canadian Tire had indicated that Mr. Duong had wrecked the car after certification and that Mr. Duong was bothering him on a daily basis.

PRIMA FACIE CASE OF DISCRIMINATION

This is a more difficult case to try as the Respondent did not give evidence. However, there are some telling hearsay comments of Mr. Garai as told by the two individuals who did give evidence, which I will indicate below. I also have the discretion to draw adverse inferences from Mr. Garai's lack of participation in the hearing.

Mr. Duong's evidence was generally reliable on the actual events that form the Complaint. Sometimes the assistance of the language interpreter was necessary to get the full nuances of Mr. Duong's testimony. However, as I will describe later, he was less persuasive when it came to issues concerning remedy. Mr. Shipman's evidence was very credible and I accept the hearsay statements attributable to Mr. Garai as found in Mr. Shipman's testimony and notes (exhibit 3).

Based on the evidence before me, I find the following: Mr. Garai did make slurs involving Mr. Duong's ancestry, race and place of origin. Specifically, I find that Mr. Garai did say the following:

You fuckin Chinese people, in your country, you drive a bicycle. Here you drive a car like this and you want me to fix this, fix that.

Fucking you people, I don't like you. I don't like your people. I don't like your country.

Look, look, the government gives the monkey a licence to teach other monkeys to drive. Get the fuck out of here.

The above comments, without a doubt, violated Mr. Duong's right to be free from discrimination in the provision of services and goods. Those comments are disparaging and derogatory in nature, heaping derision on a group of people, of whom Mr. Duong is a member. I am satisfied on a balance of probabilities that the Respondent violated the section 1 rights of the Complainant to receive equal treatment in the provision of services, goods and facilities.

I am not convinced on a balance of probabilities that Mr. Garai failed to meet his obligations as a service provider (selling a used car), save and except for the racial slurs. The evidence does not convince me of the nature of any defects in the car and whether Mr. Garai was responsible for the defects. I accept the evidence that a safety certificate was issued and that the Ministry of Transportation transferred title in the car.

Mr. Duong failed to produce any documentary evidence (e.g. from Canadian Tire, or the two repairers of his car) to show the nature of the defects and repairs to the car. Indeed, Mr. Duong, in his oral evidence, indicates that he took it into a repair shop to get the car repaired. It

was only later, upon my questioning, that Mr. Duong changes his evidence and says he took the car to two different repairers to get the car fixed. He also testifies that he lost the receipts, cannot remember the name of the places and that the car was subsequently destroyed in a car accident.

There are hearsay statements attributable to Mr. Garai to the effect that he felt that any damage to the car was caused by Mr. Duong after possession and that Mr. Garai had given him a certified safe car. Mr. Garai's view is not implausible and I accept the evidence to that effect.

Based on the evidence before me, I find that Mr. Garai viewed the Complainant as a pest and that Mr. Garai lost his temper with the Complainant. I also find that Mr. Garai did spend time after the sale to address Mr. Duong's concerns about the car. Losing one's temper and even chasing someone around the room *per se* are not necessarily discriminatory practices under the *Code*. The statements or actions must discriminate on the basis of a prohibited ground. While such actions may involve civil or criminal liability, no violation of the *Code* may be found unless there is some nexus to a prohibited ground. I do not see such a nexus here, except for the racial slurs mentioned earlier. However, looked at in the context of the racial slurs and the events that transpired, I find that Mr. Garai's actions described in this paragraph are an aggravating factor that will be considered in fashioning the remedy.

The Commission argues that I should read into the *Code* a right to be free from harassment in the provision of services, goods and facilities and find that the Respondent violated the Complainant's right to be free from harassment in the provision of services. The Board discussed the above issue in *Barclay v. Royal Canadian Legion et al.* (1997), 31 C.H.R.R. D/486. At para. 78, the Board wrote:

There is an issue as to whether a Board would find that the *Code* protected harassment, even if established, in the provision of services, although with the benefit of a full argument, it may well do so.

I have had the benefit of the Commission's argument and I shall not read into the *Code* such a provision. I have found a violation of section 1 as a result of the racial slurs of Mr. Garai against Mr. Duong. It is noteworthy that in 1981, the Legislature added subsections to the *Code* dealing with harassment in employment and in accommodation, respectively, but not for harassment in

services, goods and facilities under section 1. Amendments to the *Code* have been made since, but the Legislature has not seen fit to add a clause extending freedom from harassment to the provision of services, goods and facilities.

REMEDY

I have found Mr. Garai discriminated against Mr. Duong contrary to section 1 of the *Code* by subjecting him to racial slurs. To compensate Mr. Duong for this infringement of his right to be free from discrimination in the provision of services, I award him \$1,500.00.

I also award Mr. Duong \$500.00 for mental anguish under the *Code*. Based on the evidence, I am satisfied that Mr. Garai wilfully or recklessly hurled those racial slurs at Mr. Duong. I also find that Mr. Duong did suffer some mental anguish as a result of those racial slurs and being chased by Mr. Garai. I am convinced that he was frightened by that occurrence.

Based on my findings, no special damages flow from the breach of the *Code* and accordingly, none is awarded.

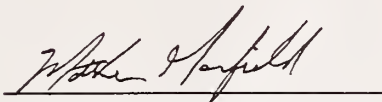
The Commission asks for some public interest remedies, such as the posting of *Code* cards and training sensitivity for Mr. Garai. I question the utility of ordering Mr. Garai to attend a sensitivity course. I hope that Mr. Garai will learn from these events and not subject customers to racial slurs, or any other discriminatory practice, in the future. I order that *Code* cards, provided by the Commission to Mr. Garai, be posted in a visible location on the premises of his business.

Pre-judgment interest shall be awarded for the damages from the date of the filing of the Complaint at the rate set under the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended. Post-judgment interest shall also accrue at the rate set by the same Act and shall run from one month after the date of this decision.

ORDER

1. The Respondent, Les Garai c.o.b. as Langstaff Auto Repairs, shall pay \$1,500.00 to the Complainant, Tan Tai Duong, as damages for the loss of his rights arising out of the Complaint and \$500.00 as damages for mental anguish suffered by the Complainant.
2. Pre-judgment interest shall be awarded for the damages from the date of the filing of the Complaint at the rate set under the *Courts of Justice Act*. Post-judgment interest shall also accrue at the rate set by the above mentioned Act and shall run from one month after the date of this decision.
3. The Respondent shall post Human Rights Code cards, as provided by the Commission, in a visible location on the premises of his business.

Dated at Toronto, this 26th day of September, 2000.


Matthew D. Garfield
Chair, Board of Inquiry

